

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 17A.7, 476.1 and chapters 476B and 476C as amended by 2009 Iowa Acts, Senate File 456, the Utilities Board (Board) gives notice that on May 21, 2009, the Board issued an order in Docket No. RMU-2009-0005, In re: Wind Energy Tax Credits, "Order Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199 IAC 15.18(476B), 15.19(476C), 15.20(476B), and 15.21(476C). The proposed amendments reflect changes to Iowa Code chapters 476B and 476C contained in 2009 Iowa Acts, Senate File 456, which was signed by the Governor on April 23, 2009. The proposed amendments also clarify that tax credit applications made pursuant to chapters 476B and 476C are not subject to the Board's electronic filing rules found in 199 IAC 14. However, written comments made about this rule making must be filed in compliance with the Board's electronic filing rules.

2009 Iowa Acts, Senate File 456, made several changes to Iowa Code chapter 476B. The changes reduced the total amount of eligible capacity from 450 megawatts to 150 megawatts (which does not require a rule change); set a maximum nameplate capacity of 30 megawatts for eligibility applications filed after March 1, 2008; set a minimum nameplate application of $\frac{3}{4}$ of a megawatt, or 750 kilowatts, for eligibility applications filed after July 1, 2009, by listed educational institutions or hospitals; changed the requirements for seeking approval from the county board of supervisors; and removed a prohibition against receiving both property tax and sales tax exemptions. The proposed amendments to 199 IAC 15.18(476B) and 15.20(476B) reflect these changes.

2009 Iowa Acts, Senate File 456, also made changes to Iowa Code chapter 476C. The changes increased the total amount of eligible wind generation capacity from 180 megawatts to 330 megawatts (which does not require a rule change) and allow an eligible wind generation facility to apply for a 12-month extension of its 30-month operational deadline if the facility is not operational due to the unavailability of necessary equipment. The new statutory requirement for extensions is reflected in the proposed amendment to 199 IAC 15.19(4).

Regarding the change to Iowa Code chapter 476C allowing a 12-month extension of the operational deadline for wind generation facilities, the Board notes that the previous statutory wording (prior to 2009 Iowa Acts, Senate File 456) was ambiguous. Iowa Code section 476C.3(3) allowed a blanket 30 months for a facility to become operational, following Board approval of eligibility. However, Iowa Code section 476C.3(3) also provided wind generation facilities an initial 18 months to become operational, plus an additional 12 months if necessary equipment is unavailable (30 months total). In the previous rule making (Docket No. RMU-06-7 published in IAB Vol. XXIX, 12/20/06, as **ARC 5611B**), the Board resolved the ambiguity of these two statutory provisions by focusing on the first provision (the blanket 30 months), which superseded the second provision (18 months plus a 12-month extension for wind facilities). Based on this interpretation, the change in 2009 Iowa Acts, Senate File 456, that increases the existing 12-month extension for wind facilities by 12 months (i.e., from 12 months to 24 months) also increases the operational deadline for wind facilities by 12 months (i.e., from 30 months to 42 months) if necessary equipment is unavailable.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 7, 2009. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site

at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on July 29, 2009, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

These amendments are intended to implement Iowa Code section 476.1 and chapters 476B and 476C as amended by 2009 Iowa Acts, Senate File 456.

The following amendments are proposed.

ITEM 1. Amend subparagraph **15.18(1)“c”(2)** as follows:

(2) Total nameplate generating capacity rating. For applications filed on or after March 1, 2008, the facility must have a combined nameplate capacity of no less than 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate capacity of no less than ¾ of a megawatt;

ITEM 2. Amend subrule 15.19(4) as follows:

15.19(4) Loss of eligibility status. Within 30 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 30 months of board approval, the facility will lose eligibility status. ~~However, the facility may reapply to the board for new eligibility.~~

However, if the facility is a wind energy conversion facility and is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the 30-month limit, attesting to the unavailability of necessary equipment. After granting the 12-month extension, if the board determines that the facility was not operational within 42 months of board approval, the facility will lose eligibility status.

If the facility loses eligibility status, the facility may reapply to the board for new eligibility.

ITEM 3. Amend subrule 15.20(1) as follows:

15.20(1) Application process for wind energy tax credits. A wind energy facility must be approved as eligible by the board under 199 IAC 15.18(476B) in order to qualify for wind energy tax credits.

~~The~~ If the facility is located in a city or county neither of which has enacted an ordinance under Iowa Code section 427B.26, or if the facility is not eligible for special valuation pursuant to an ordinance adopted by the city or county under Iowa Code section 427B.26, the wind energy facility must also be approved by the city council or county board of supervisors of the city or county in which the facility is located, in accordance with Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4. Once the owners receive approval from their city council or county board of supervisors, additional approval from the city council or county board of supervisors is not required for subsequent tax years.

~~Wind energy tax credits shall not be allowed for a facility for which the owners have claimed an exemption from property tax under Iowa Code sections 427B.26 or 441.21(8), or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with department of revenue rule 701 IAC 80.13(427B).~~

Tax credit applications for eligible facilities must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications must be filed in paper format and are not subject to the electronic filing requirements of 199 IAC 14.2(17A,476). The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)“c”) and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)“b”(3). Accordingly, the applicant should mark each of the pages of the tax credit application “CONFIDENTIAL” in bold or large letters.

a. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.20(476B)), and the following ~~14~~ 13 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.18(476B), plus any subsequent amendments to the application.

(2) A copy of the board’s determination approving the facility as eligible for tax credits under 199 IAC 15.18(476B).

(3) ~~A~~ Either a copy of the city council’s or county board of supervisors’ approval, from the city or county in which the facility is located, issued pursuant to Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4; or a statement explaining why such approval is not required under Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4.

~~(4) –A statement attesting that the owners have not claimed an exemption for the facility from property tax under Iowa Code section 427B.26 or 441.21(8), or from sales tax under Iowa Code section 423.3(54).~~

~~(5)~~ (4) A statement attesting that neither the owners nor the purchaser have received renewable energy tax credits for the facility under 199 IAC 15.21(476C).

~~(6)~~ (5) For any electricity sold, a copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

~~(7)~~ (6) For any electricity sold, the owner must provide a statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of “related person” is the same as specified in department of revenue subrules 701 IAC 42.25(2) and 52.26(2). That is, the definition of “related person” uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

For any electricity used for on-site consumption, the owner must provide a signed statement attesting under penalty of perjury that the electricity for which tax credits are sought was generated by the eligible facility and not sold.

~~(8)~~ (7) The date that the eligible facility was placed in service (that is, between July 1, 2005, and July 1, 2012).

~~(9)~~ (8) The total number of kilowatt-hours of electricity generated by the facility during the tax year.

~~(10)~~ (9) For any electricity sold, invoices or other information that documents the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

For any electricity used for on-site consumption, the number of kilowatt-hours of electricity generated by the eligible facility during the tax year and not sold.

~~(14)~~ (10) Information regarding the facility owners, including the name, address, and tax identification number of each owner, and the percentage of equity interest held by each owner during the period for which wind energy tax credits will be sought under Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456. If an owner is other than a natural person, information regarding the equity owners must also be provided. This information shall be consistent with information provided in the original application for facility eligibility, as amended, under 199 IAC 15.18(476B).

~~(12)~~ (11) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

~~(13)~~ (12) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant's eligibility and any available supporting documentation.

~~(14)~~ (13) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity, for each of the partners, members, shareholders, or beneficiaries of the entity. The wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company, to receive the wind energy tax credits issued under Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456, and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. No change.

ITEM 4. Amend subrule 15.21(1), introductory paragraph, as follows:

15.21(1) *Application process for renewable energy tax credits.* A renewable energy facility must be approved as eligible by the board under 199 IAC 15.19(476C) in order to qualify for renewable energy tax credits. Tax credit applications must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications must be filed in paper format and are not subject to the electronic filing requirements of 199 IAC 14.2(17A,476). The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5) "c") and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8) "b"(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.